

THE STATE OF NEW HAMPSHIRE

SUPREME COURT

In Case No. 2003-0710, State of New Hampshire v. Peter W. Linley, the court on November 10, 2004, issued the following order:

Following a bench trial, the defendant, Peter Linley, was convicted of driving under the influence of intoxicating liquor. See RSA 265:82 (2004). On appeal, he contests the sufficiency of the evidence. We affirm.

“The general rule in this jurisdiction is that a contemporaneous and specific objection is required to preserve an issue for appellate review.” State v. Blackmer, 149 N.H. 47, 48 (2003) (quotations omitted). “This rule, which is based on common sense and judicial economy, recognizes that trial forums should have an opportunity to rule on issues and to correct errors before they are presented to the appellate court.” Id. (quotations omitted). Having reviewed the record of the proceedings below, we conclude the issue of sufficiency has not been preserved. The only reference made by defense counsel to the evidence presented was during a sentencing discussion, after the court had found the defendant guilty. The statement that, “I don’t think there’s been . . . any evidence that Mr. Linley was impaired[; a]nd certainly, there is no indication that this is a problem of any sort that requires any kind of ongoing treatment . . .” failed to apprise the court that the defendant wished to contest the finding of guilt based on the sufficiency of the evidence.

We note, however, that even if the issue were properly before us, we would affirm the decision of the trial court. See State v. Parmenter, 149 N.H. 40, 43 (2002) (to prevail on sufficiency of evidence challenge, defendant must demonstrate that no rational trier of fact evaluating all of the evidence and its reasonable inferences in light most favorable to State could conclude beyond reasonable doubt that he had committed charged crime). The State's first witness testified that she thought she could smell an odor of alcohol on the defendant and that after she helped him out of the water, she continued to watch him and observed him staggering. When found by the arresting officer, the defendant was in his car, had bloodshot eyes, admitted drinking earlier in the day and had alcohol in a travel cup in his car which he dumped out when the officer asked to inspect it. He then failed two field sobriety tests. At the hospital, he declined to take a chemical test, refused to sign the ALS form and said several times to the arresting officer, “Please don’t ruin my life.” Although the defendant attributed his impairment to hypothermia, the witnesses he presented were his uncle and a female friend; although healthcare professionals, they did not observe him on the day of his arrest. Even if the

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evidence he presented might have supported a conclusion that the defendant was not impaired by alcohol, it was the responsibility of the trial court to resolve conflicts in the evidence. See id.

Affirmed.

BRODERICK, C.J., and NADEAU and DALIANIS, JJ., concurred.

**Eileen Fox,
Clerk**

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